



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



John P. Anderson
P.O. Box 602
Route 119
Rindge, NH 03461

Re: Construction Approval No.
#CA2002043898 (Panopoulos)
#CA2002041298 (Olin)

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 03-005**

March 24, 2003

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to John P. Anderson, pursuant to RSA 485-A:29-44 and Env-Ws 1000 *et seq.* The Division is proposing that fines totaling \$4,000 be imposed against John P. Anderson for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.

John P. Anderson is an individual having a mailing address of P.O. Box 602, Rindge, NH 03461

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. Pursuant to RSA 485-A:43, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 485-A:29-44, including any rule adopted thereunder. Pursuant to this section, the Commissioner has adopted Env-C 604 to establish the schedule of fines for such violations.
3. RSA 485-A:32, I prohibits construction of a septic system without prior approval of the plans and specification of the system by DES.
4. RSA 485-A:36, I requires any person engaging in the business of installing septic systems to obtain an installer's permit from DES. RSA 485-A:36, II allows a person desiring to install or repair a septic system for his/her own domicile without obtaining an installer's license.

5. On June 14, 2002, DES issued Construction Approval #CA2002043898 to David and Dianne Panopoulos for the replacement of a failed septic system serving a two bedroom apartment, a 45 seat restaurant (Pizza Haven), 4 employees and using 240 gallons of water per day ("the Panopoulos Property"). The approved plan was designed by Monadnock Septic Design.
6. On or about September 19, 2002, DES personnel received a telephone call from Mr. Panopoulos seeking final inspection of the septic system installed on the Panopoulos Property. During the telephone conversation, the Mr. Panopoulos informed DES personnel that the septic system had been installed by John P. Anderson.
7. On March 11, 2002, DES issued Construction Approval #CA2002041298 to Larry Olin for construction of a septic system on property located on Drag Hill Road in Rindge, NH ("the Olin Property").
8. On September 20, 2002, at Mr. Olin's request, DES personnel inspected the septic system installed on the Olin Property. During or after the inspection, Mr. Olin informed DES personnel that the septic system had been installed by John P. Anderson.
9. John P. Anderson is not licensed to install septic systems in the State of New Hampshire.
10. In August, 2002, John P. Anderson took the septic system installer's examination prepared and administered by DES personnel. Mr. Anderson failed that test.
11. DES personnel have contacted Mr. Anderson several times, requesting that he affiliate with a licensed septic system installer. However, Mr. Anderson has failed to do so.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. John P. Anderson has violated RSA 485-A:36, I by installing a septic system at the Panopoulos Property without a septic system installer's license. Pursuant to Env-C 604.02(h), the Division is seeking a fine of \$2,000 for this violation.
2. John P. Anderson has violated RSA 485-A:36, I by installing a septic system at the Olin Property without a septic system installer's license. Pursuant to Env-C 604.02(h), the Division is seeking a fine of \$2,000 for this violation.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than **April 23, 2003** using the enclosed colored form.

1. If John P. Anderson would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If John P. Anderson chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it with payment of the fine to the DES Legal Unit.

3. If John P. Anderson wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit and call the DES Legal Unit to indicate 's interest in settling.

John P. Anderson is not required to be represented by an attorney. If Mr. Anderson chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that John P. Anderson committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is more likely than not that the thing sought to be proved is true.

If the Division proves that John P. Anderson committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:


- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that John P. Anderson proves, by a preponderance of the evidence, applies in this case:**
 - 1 The violation was a one-time or non-continuing violation, **and** did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** John P. Anderson did not benefit financially, whether directly or indirectly, from the violation.
 - 2. At the time the violation was committed, John P Anderson was making a good faith effort to comply with the requirement that was violated.
 - 3. John P. Anderson has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 - 4. Other information exists which is favorable to John P. Anderson 's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that John P. Anderson committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is John P. Anderson's opportunity to present testimony and evidence that John P. Anderson did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If John P. Anderson has any evidence, such as photographs, business records or other documents, that John P. Anderson believes show that John P. Anderson did not commit the violation(s) or that otherwise support John P. Anderson's position, John P. Anderson should bring the evidence to the hearing. John P. Anderson may also bring witnesses (other people) to the hearing to testify on John P. Anderson's behalf.

If John P. Anderson wishes to have an informal meeting to discuss the issues, must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Anderson has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


Harry T. Stewart, P.E., Director
Water Division

CERTIFIED MAIL # 7000 0600 0023 9936 5718

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Mark Harbaugh, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney
Dick deSève, DES, SSB
Town of Rindge Board of Selectmen